IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATIONS NOS 12124 AND 10703 OF 2000

WITH

SPECIAL CIVIL APPLICATIONS NOS 3633 AND 5880 OF 2001

WITH

CIVIL APPLICATIONS NOS. 9354, 5713 AND 10775 OF 2001

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? :

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MARY BROWN MEMORIAL TRAINING COLLEGE

Versus

DIRECTOR OF PRIMARY EDUCATION

Appearance:

sca 12124/00, sca 10703/00, ca 5713/01
MR GL SANGHI AND MR SH SANJANWALA Sr. Counsel with
MR RS SANJANWALA AND MR V. SANGHI for petitioners
sca 3633/01, sca 5880/01, ca 9354/01
MR YN OZA SR. COUNSEL WITH MR. N.S. DASANI for petitioners
MR SN SHELAT ADVOCATE GENERAL FOR STATE OF GUJARAT WITH
MR AD OZA, GOVERNMENT PLEADER
MR PK JANI for Respondent No. 3
MR SN THAKKAR for UNION OF INDIA

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE RAVI R.TRIPATHI

Date of decision: /12/2001

ORAL JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

#. These Petitions under Article 226 of the Constitution of India have been filed by minority educational institutions of Indian Christians which are running Women's Teacher Training Colleges in Borsad (District : Kheda), Ankleshwar (District : Bharuch) and Godhra (District : Panchmahal).

#. Their main grievance is that step by step on several decisions of High Court and Supreme Court the fundamental rights guaranteed to minority educational institutions under Article 30 of the Constitution are being gradually curtailed.

#. In the two Petitions filed by Minority Educational Institution Mary Brown Memorial Training College, Borsad (for short "the MBMT College") (SCA 12124/00 & SCA 10703/00) the grievance raised is that the Institution on the decision of the Apex Court in the case of St. Stephen's College v. University of Delhi AIR 1992 SC 1630 could not question the directions of the respondents to fill 50% of their intake capacity by

admitting students from other than minority community, but they have serious objection to the directions issued and coercion exercised, on the pain of derecognising them, to grant admission to the students for the remaining 50% of the vacancies on the Centralised Admission List prepared under the Regulations and norms fixed by the National Council for Teachers Education under the National Council for Teachers Education Act, 1993 (for short "the NCTE Act"). The other grievance raised by MBMT College (in SCA 10703/00) is that suddenly and arbitrarily their initial intake capacity is reduced from 40 to 30.

#. So far as the other Christian minority institutions representing the Teachers Training Colleges at Ankleshwar and Godhra are concerned, the common challenge is to the insistence of the respondents on them to fill 50% of their seats from the Centralised Admission List prepared by the National Council for Teachers Education.

#. The case of the petitioners is that in view of the decision of the Supreme Court in St. Stephen's College (supra) and the subsequent interim orders made by the Supreme Court from time to time in the pending cases there, they cannot legitimately question the direction to the minority institutions to fill 50% of their seats from candidates on merits from other than minorities. The method of admission, however, adopted by the Institution by fixing minimum percentage of marks in qualifying examination of 50% instead of 60% as fixed by the Council and subjecting the students to interview, cannot be objected to by the Council or the State of Gujarat. On behalf of the Minority Educational Institutions, it is argued that some regulatory rules or measures can be made applicable to minority institutions to maintain their standard and efficiency, but if the minority institutions insist on higher standard of excellence for granting admission to their Institutions, the respondents representing the Authorities of the State and the Council cannot insist that 50% of the students must be filled on minimum qualification of 50% marks in qualifying examination and without interview and only from the Centralised Merit List prepared by the Council.

#. Learned Sr. Counsel Shri G.L. Sanghi appearing for the petitioner and the Sr. Counsel Shri Yatin Oza appearing in the connected cases have placed their strong reliance on the decision of the Supreme Court of the same party Mary Brown Memorial Training College

rendered by Six Judges Bench of the Supreme Court in the case of Rev. Sidhrajbhai Sabbai and others v. State of Gujarat and another (AIR 1963 SC 540). It is argued that Five Judges Bench decision of the Supreme Court in St. Stephen's College (supra) (AIR 1992 SC 1630), which has followed the Six Judges Bench decision in the case of Sidhrajbhai (supra) has no where held that 50% seats which should be made available by the minority institutions to general candidates should be filled only on the norms and rules framed by the educational Authorities of the State or the Council and the minority educational institutions cannot prescribe higher standards or norms to maintain higher standard of the institutions for admitting students on those 50% seats. It is argued that directions issued by the respondent Authorities of the State and the Council to fill 50% seats from the Centralised Admission List is a serious inroad on the fundamental rights of the minority institutions guaranteed to them under Article 30(1) to "administer educational institutions at their choice".

#. On behalf of the State of Gujarat and its educational Authorities, the learned Advocate General Shri S.N. Shelat and Shri Prakash Jani, learned counsel appearing for the Council supported by Shri S.N. Thakkar appearing for the Union of India have adopted somewhat a common stand with different arguments advanced by them that after permitting the minority institutions to fill 50% of their seats at their choice from candidates from minority community, the admission to 50% general seats has to be in accordance with the norms and guidelines fixed by the Council. Such regulatory measures which are non discriminatory to all students of general category waiting for admissions all over the State, is not any encroachment on the fundamental right of the minority educational institutions and there is no violation of Article 30(1) of the Constitution of India. Very strong reliance has been placed on several subsequent decisions of the Supreme Court after Six Judges Bench decision of the Supreme Court in Sidhrajbhai's case (supra) and Five Judges Bench decision in the case of St. Stephen's College (supra). To the aforesaid subsequent decisions, we shall make a detail reference in the following pages of our opinion.

#. On behalf of the respondents a request has been made not to proceed to decide this batch of Petitions as the correctness of the opinion expressed by Five Judges Bench in St. Stephen's College case (supra) has

been referred by a Five Judges Bench in the case of TMA Pai Foundation and others (II) v. State of Karnataka and others (1993) 4 SCC 286 to a Larger Bench of Eleven Judges of the Supreme Court. One of the specific questions directly raised before us and has been referred to the Bench of Eleven Judges of the Supreme Court is:-

"Whether the decision of this Court in St. Stephen's is right in saying that Article 30 clothes a Minority Educational Institution with the power to admit students by adopting its own method of selection and that the State or the affiliating University has no power to regulate admission of students to such Minority Educational Institution even while permitting the Minority Educational Institution to admit students belonging to the relevant minority to the extent of 50% of its intake capacity?"

#. The Eleven Judges Bench of the Supreme Court assembled once in the case of TMA Pai Foundation & Ors. v. State of Karnataka & Ors. JT 1998(4) SC 318, but the only short order passed by the Supreme Court was that the said Larger Bench of Eleven Judges would not feel itself bound by the earlier decisions of the Supreme Court by Seven Judges Bench in In Re The Kerala Education Bill, 1957 AIR 1958 SC 956 and Nine Judges Bench decision in the case of The Ahmedabad St. Xavier's College Society Vs. State of Gujarat 1975(1) SCR 173. The matter pending before the Larger Bench of Eleven Judges presently rests there and according to the learned counsel for the petitioners it is very uncertain when the Bench would assemble and give a final verdict to be applied to all Minority Educational Institutions throughout India.

##. It is in the aforesaid compelling circumstances and uncertain situation that the petitioners have compelled us to proceed to decide this batch of Petitions regarding admission to 50% of seats in Minority Educational Institutions earmarked for general candidates to be filled on merits. The question raised before us is both intricate and delicate. It is intricate because there are several conflicting views of different Benches of the Supreme Court of different sizes and there are large number of interim orders of the Supreme Court which obviously cannot be taken as final precedents. The question involved is delicate in the sense that as has been done by the Supreme Court and the High Courts in the past, a balance has to be

struck between the competing rights of minorities and majority seeking admission to the Minority Institutions which have throughout maintained a good record of reputation and excellence.

##. When India gained freedom from the British, the framers of the Constitution were very much conscious and alert to provide fundamental rights to minorities because through out the ages India has been a habitat of people of all kinds of religions, sects, denominations and cultures. There was in the background the existence of large minorities of Muslims which was insisting on recognition of their identity and participation in the governance. Ultimately, it resulted into partition of India into India and Pakistan with large scale migration of Muslims to Pakistan, yet, leaving behind a greater number of Muslims in India. Articles 29 and 30 were therefore included as granting fundamental, cultural and educational rights to minorities. These fundamental rights were enacted in the Constitution not only to recognise the dignity of the individual to which the Preamble refers, but also to recognise right of minorities to be granted opportunity for the full development of the members of their community and also for preserving the unity of India. Several fundamental rights thus conferred on individuals and groups secure the unity of India by removing well known sources of discord. Before partition, the Muslim community was, and even after partition still is, the largest minority in India. A society in which democratic and fundamental rights of minorities are protected and well safe-guarded can alone claim to be cultured and civilized. The test of Constitution, it has been said, is the protection which it gives to minorities. Article 25 confers on any person the right to practise, profess and propagate religion, and article 26 confers on religious dominations the right to manage their own affairs in matters of religion. Similarly, Articles 29 and 30, protect the cultural, educational and linguistic rights of minorities. These Articles thus remove the most potent sources of discord in a multi-racial society. Learned Author Seervai in his monumental work Constitutional Law of India 4th Edition Vol. II at pp 1309 in Chapter XIII has reminded the Court of its duty from the following quotation and poetic lines from our National Anthem and our National Poet Rabindranath Tagore:-

"So long as the Constitution stands as it is
and is not altered, it is, we conceive, the

duty of this Court to uphold the fundamental rights and thereby honour our sacred obligation to the minority communities who are of our own. Throughout the ages endless inundations of men of diverse creeds, cultures and races - Aryans and non-Aryans, Dravidians and Chinese, Scythians, Huns, Pathans and Mughals - have come to this ancient land from distant regions and climes. India has welcomed them all. They have met and gathered, given and taken and got mingled, merged and lost in one body. India's tradition has thus been epitomised in the following noble lines:

`None shall be turned away
From the shore of this vast sea of
humanity
That is India'

Indeed India has sent out to the world her message of goodwill enshrined and proclaimed in our National Anthem:

`Day and night, thy voice goes out from
land to land,
Calling Hindus, Buddhists, Sikhs and
Jains round thy throne and Parsees,
Mussalmans and Christians.
Offerings are brought to thy shrine by
the East and the West to be woven in a
garland of love.
Thou bringest the hearts of all peoples
into the harmony of one life,
Thou Dispenser of India's destiny.
Victory, Victory, Victory to thee."

##. A brief survey is required to be made of the decisions so far rendered by the Supreme Court on the question of fundamental right of Minority Educational Institutions under Article 30. The earliest decision was Seven Judges Bench case in relation to the Kerala Education Bill, 1957 AIR 1958 SC 956, in which the proposed legislation to make primary education free in Kerala and insisting even all Minority Educational Institutions not to charge fee from the students was held by the majority to be an encroachment on the fundamental right of the Minority Educational Institutions, because such a provision was encroachment on the right of Minority Educational Institutions to establish and maintain themselves without financial aid from the Government and was indirectly a compulsion on

them to seek financial help from the Government. It is not necessary for us to go into the greater details of that case.

##. The next decision is in the case of the very petitioner representing Mary Brown Memorial Training College reported in AIR 1963 SC 540 Sidhrajbhai and others vs. State of Gujarat and others. A very heavy reliance has been placed on behalf of the petitioners on Six Judges Bench decision in Sidhrajbhai's case (supra). What is highlighted is that even if regulatory measures can be framed to make them applicable even to Minority Institutions such regulations should be in the interest of the Institution and not in general public interest or in the interest of the students in general. Particular emphasis has been laid on the following part of the opinion of the Six Judges Bench decision in Sidhrajbhai's case (supra):

> "The right established by Art. 30(1) is intended to be a real right for the protection of the minorities in the matter of setting up of educational institutions of their own choice. The right is intended to be effective and is not to be whittled down by so-called regulative measures conceived in the interest not of the minority educational institution, but of the public or the nation as a whole. If every order which while maintaining the formal character of a minority institution destroys the power of administration is held justifiable because it is in the public or national interest, though not in its interest as an educational institution the right guaranteed by Art. 30(1) will be but a "teasing illusion", a promise of unreality. Regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution, while retaining its character as a minority institution, effective as an educational institution. Such regulation must satisfy a dual test - the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it."

##. The next important decision is of Nine Judges Bench judgment in the case of The Ahmedabad St. Xavier's College Society and another etc., vs. State of Gujarat and another AIR 1974 SC 1389 where the majority took a view that certain provisions of Gujarat University Act do not apply to educational institutions established and administered by linguistic and religious minorities.

##. From different views expressed by the learned Judges of the Supreme Court, the learned Advocate General by taking support from those decisions submits that regulations made in the true interest of efficiency of institutions, discipline, health, sanitation, morality, public order and the like can undoubtedly be imposed. Such regulations are not restrictions on the substance of the right which is guaranteed. They secure proper functioning of the institutions. Such regulations or regulatory measures may be imposed either by executive or legislative action as a condition of receiving grant or recognition. Regulatory measures which are directed to make the institution effective and efficient does not in any manner encroach upon retention of the character of such institution as a minority institute. If the regulatory measures imposed on a minority institution satisfy the dual test of reasonableness and of it being regulatory of the educational character of the institution and conducive to it, no charge of taking away fundamental right of Minority Educational Institution can be levelled and sustained.

##. After these Larger Bench decisions in the case of Sidhrajbhai's case (supra) and St. Xavier's both arising from State of Gujarat, the ambit of fundamental right under Article 30 of Minority Educational Institutions came to be considered by Five Judges Bench of the Supreme Court in the case of St. Stephen's College case (AIR 1992 SC 1630). In St. Stephen's College for the first time, the Supreme Court tried to maintain a balance between the right of Minority Educational Institutions to establish and administer Institutions in the manner they like and the right of students in general and public forming the majority. It is for the first time in St. Stephen's College case, the Supreme Court held and fixed a ratio that 50% of seats in Minority Educational Institutions can be filled from members of the minority community to protect their right to maintain their culture and educate their community as per their choice guaranteed to them under Article 30 r.w. Article 29 of the

Constitution of India. The remaining 50% of seats according to the Supreme Court in St. Stephen's College (supra) should be thrown open for admission of general students strictly on the basis of merit. The Supreme Court, however, recognised the mode and method of admitting students to the 50% from students other than minority community on merit and in accordance with their own norms, rules or regulations fixed by the Minority Educational Institutions uninhibited by any executive or legislative act of the State. The decision in St. Stephen's College case is thus starting point of controversy which time and again came up before various High Courts of India and through them or directly in the Supreme Court resulting into passing of various orders of interim nature during and after the reference of cases to Eleven Judges Bench of the Supreme Court. After St. Stephen's College case, Supreme Court delivered a land mark judgment in the case of Unni Krishnan, J.P. and others etc. etc., v. State of Andhra Pradesh and others etc. etc. AIR 1993 SC 2178 to curb commercialisation of education. In large scale educational institutions were charging capitation fee for granting admission and thus depriving meritorious students from seeking admission to the technical and medical colleges. When the decision of the Supreme Court in Unnikrishnan's case was sought to be made applicable to the Minority Educational Institutions, in the case of TMA Pai Foundation and others (AIR 1994 SC 13), the Five Judges Bench raised serious doubt on the correctness of decision in St. Stephen's College case and referred the question quoted by us above for deciding the constitutional question by a Larger Bench of 11 Judges. The decision of Unnikrishnan's case was therefore partly applied to Minority Educational Institutions also by fixing a ratio of 50:50, i.e. 50% of seats were to be allowed to the Minority Educational Institutions to fill the same from students of minority community and the remaining 50% to be filled by general students strictly on merit. The subsequent order of the Supreme Court in the case of TMA. Pai Foundation and others v. State of Karnataka and others AIR 1994 SC 2372 is also an order of interim nature awaiting verdict of Eleven Judge Bench case and therefore cannot be read as a precedent as is sought to be done on behalf of the respondents.

##. Reliance is also heavily placed by Shri P.K. Jani appearing for the Council on the decision of the Supreme Court in the case of Shahal H. Musaliar & Anr. etc. etc. v. State of Kerala & Ors. etc. JT 1993

(4) SC 584 where on the basis of Unnikrishnan case ratio of 50:50 was fixed for even admissions to Minority Institutions. From the report of the judgment itself, in para 22 it is mentioned that it is an order of interim nature and not a final opinion of the court as the court has expressed that the matter requires consideration by a Larger Bench and final orders would be passed subsequently.

##. We have already referred to the two other orders passed by Seven Judges Bench of the Supreme Court in the case of TMA Pai Foundation and others v. State of Karnataka and others 1997(2) SCALE (S) 6 and order in the same party's case reported in JT 1998(4) SC 318. Thus the Bench reiterated that this important question on the extent of right of Minority Educational Institutions guaranteed under Article 30 of the Constitution deserves to be resolved by a Larger Bench of 11 Judges of the Supreme Court after considering the decision of earlier Benches of the Supreme Court in Kerala Education Bill, 1957 (supra), St. Xavier's College Society (supra) and St. Stephen's College (supra).

##. The legal position with regard to the ambit of right of Minority Educational Institutions under Article 30 of the Constitution of India thus is somewhat fluid and there is great justification in the request made on behalf of the respondents that this Court should await the verdict of the Eleven Judges Bench of the Supreme Court. We are, however, persuaded by the learned counsel for the petitioners to express our opinion because there is uncertainty as to when the verdict by Eleven Judges Bench of the Supreme Court will be delivered. The question is of a recurring nature in every academic year and it had already arisen in this academic year in which this Court tried to resolve the controversy by making interim order to regulate admissions. This Court directed by interim order passed on 5-7-2001 that the Minority Educational Institutions may adopt the Centralised Admission List prepared by the Council and apply its own norms of minimum eligibility of 60% marks in qualifying examination and can also subject the students to interview.

##. As the state of law now exists, we have to decide this case on the basis of the judgments delivered by the various Benches of the Supreme Court in the cases of Kerala Education Bill, 1957 (supra), Sidhrajbhai's case (supra) St. Xavier's College Society's case

(supra) and St. Stephen's College case (supra). Fortunately for us, a Two Judges Bench of the Supreme Court in the case of St. John's Teachers Training Institute (For Women), Madurai and others v. State of Tamil Nadu and others (1993) 3 SCC 595 have approved the legal principles culled out by the High Court of Madras on the basis of all decisions of the Supreme Court referred to above and those principles should guide us in deciding the case. The legal principles culled out from various decisions and approved by the Two Judges Bench decision of the Supreme Court are :-

"(1) The fundamental right declared by Article 30(1) of the Constitution is absolute in terms, but subject to regulatory measures.

(2) There is no fundamental right under Article 19(1)(g) of the Constitution to establish or administer an educational institution, if recognition is sought therefor.

(3) The institutions must be educational institutions of the minorities in truth and reality and not mere masked phantoms.

(4) There is no fundamental right to recognition and any institution seeking recognition should abide by the regulations prescribed by the State as conditions therefor.

(5) The minority institutions must be fully equipped with educational excellence to keep in step with other institutions in the State.

(6) The regulations framed by the State cannot abridge the fundamental right of the minorities and they should be in the interests of the minority institutions themselves and not based on State necessity or general societal necessities.

(7) The regulations should be with a view to promoting excellence of educational standards and ensuring security of the services of teachers and other employees of the institutions and in the true interests of efficiency of institutions, discipline, health, sanitation, morality, public order and the like.

(8) Even unaided institutions are not immune from the operations of general laws of the land such as Contract Law, Tax measures, Economic Laws, Social Welfare Legislations, Labour and Industrial Laws and similar other laws which are intended to meet the need of the society."

##. The outcome of the aforesaid brief survey of the

various decisions of the Supreme Court and on considering the submissions made on behalf of the Educational Institutions and the Authorities of the State and the Council, we are of the considered opinion that awaiting verdict of the Eleven Judges Bench of the Supreme Court, we can uphold the directions of the Council to the extent of directing the Minority Educational Institutions to grant admission to 50% of the seats to be filled on merit from general students from the Centralised Admission Merit List.

##. We, however, do not find any constitutional or legal justification for the Council and the State Authorities to insist that the Minority Educational Institutions must straightway grant admission on the basis of Centralised Merit List sent to them by the Council and they cannot lay down a higher norm of minimum 60% marks in qualifying examination and subject the candidates to interview before selecting them for admission from the Centralised Admission System.

##. On behalf of the respondents it is urged that allowing method of selection through interview even on 15% marks would give rise to underhand dealings and practices to induct students on grounds other than merit. It is submitted that interview method for young students who have passed their SSC examination is not a fair and correct method.

##. The argument advanced on behalf of the respondents to object to the interview method does not at all commend to us. Merely because there is a possibility of some misuse of that method by the Admission Authorities is no ground to reject the method as a whole. If some clandestine inductions through the interview process are detected by the educational Authorities they have all rights under their Rules to take remedial measures against the Educational Institutions and their Authorities, but it cannot be said that in no case for admitting students to primary training teachers course which would train them to get employment as teachers, interview can never be a good method. For becoming a teacher apart from academic qualifications and minimum required passing marks in written papers, qualities of expression, speech and personality are necessary. The teachers impart education and therefore it is expected of them that they should have good personality and power of expression. This can only be judged when a candidate is exposed to interview by a interviewing body. Learned counsel for the petitioner has placed reliance

on the decision of R. Chitralekha v. State of Mysore and others AIR 1964 SC 1823. The following observations in that case fully support the stand taken on behalf of the Institutions that interview can be allowed to be a sound and fair method to select candidates to a professional course:

> "An order passed by the Government prescribing interviews for selecting from candidates possessing minimum academic qualifications for admission to colleges and definite criteria in the matter of giving marks at the interview and appointing competent men to make the selection on that basis does not in any way contravene Art. 14 of the Constitution. (para 12)
>
> Selection by interview is one of the well-accepted mode of selection and it cannot be condemned by adopting a wide statement that, whatever may be the objective tests laid down, in the final analysis it gives ample room for discrimination and manipulation as the awarding of marks is left to the subjective satisfaction of the selection committee and hence it is inherently repugnant to the doctrine of equality embodied in Art. 14. If there can be manipulation or dishonesty in allotting marks at interviews, there can equally be manipulation in the matter of awarding marks in the written examinations. In the ultimate analysis, whatever method is adopted its success depends on the moral standards of the members constituting the selection committee and their sense of objectivity and devotion to duty. This criticism is mere a reflection on the examination than on the system itself. The scheme of selection, however perfect it may be on paper, may be abused in practice. That it is capable of abuse is not a ground for quashing it. So long as the order lays down relevant objective criteria and entrusts the business of selection to qualified persons, the Court cannot have any say in the matter. If in any particular case the selection committee abuse its power in violation of Art. 14 that may be a case for setting aside a particular interview."

##. By an interim order this Court has already directed the Educational Institutions to restrict their interview marks to 15% of the total marks which is a reasonable percentage even recognised by the Supreme

Court in several cases of admission to technical and medical colleges. The same percentage of marks for interview can be adopted for the future academic years without any objection to the fairness of this method. The decisions of the Supreme Court in Sidhrajbhai (supra), St. Xavier's College Society (supra) and St. Stephen's College (supra) alone are binding precedents on this Court. The present state of law is that Article 30 of the Constitution can be regulated by reasonable regulations - executive or statutory by the Authorities of the State. Such Regulations or Regulatory measures are, however, permissible only in so far as they do not restrict the right of "administration" of minority institution, but facilitate and ensure better and more effective exercise of that right for the benefit of the Institution. The regulatory measures must allow the institutions to retain their minority character. In order to be in consonance with Article 30(1) of the Constitution, a Regulation imposed by the State upon a Minority Institution must be reasonable and regulative of the educational character of the Institution as to be conducive to making the Institution an effective vehicle of education for the minority community or other persons who resort to it. As has been held by the Supreme Court in the case of St. Xavier's College Society (supra) a Regulation would be reasonable if it reconciles or secures a reasonable balance between the two objectives of ensuring a standard of excellence of the Institution and of preserving the right of the minority to administer the Institution as a minority Institution. (See St. Xavier's College Society (supra)).

##. In the instant case, 50% of seats are being filled by the Minority Educational Institutions from general candidates on merit apart from remaining 50% seats which they propose to fill from students of minority community. For the 50% seats to be filled from general candidates on merit, the Institution insists on minimum 60% of marks in qualifying examination and also wishes to subject them to interview. The stand taken by the educational Authorities of the State and the Council is that contrary to the norms fixed by the Council of 50% marks in qualifying examination for general candidates, minimum qualifying marks of 60% and process of interview cannot be insisted upon by the minority institutions. Such stand undoubtedly to that extent encroaches on the fundamental right guaranteed to minority institutions to administer their educational institutions at their choice and maintain higher

standard of excellence of their Institution. Such insistence or compulsion imposed by the Authorities of the State Council, in our considered opinion, makes a serious inroad on the fundamental right of the Minority Educational Institution to `administer' their institution on higher standards. If the Larger Bench of the Supreme Court of 11 Judges Bench takes a different view that may guide the minority institutions and the Nation as a whole on the question of fundamental right under Article 30(1), but in the present state of law, regulatory measures which are in the interest of the Institution to maintain its quality and excellence alone can be sustained. The right of Minority Educational Institutions to insist on a higher standard for admission to their Institution cannot be objected to by the Authorities of the State. It is no doubt true that NCTE Act has been enacted with a laudable purpose as its Preamble shows "to provide for establishment of a National Council for Teacher Education with a view to achieving planned and coordinated development of teacher education system throughout the country and for the regulation and proper maintenance of norms and standards in the teacher education system and for matters connected therewith".

##. If a Minority Educational Institution intends to fix higher norms or standards for teacher education in their Institution, their right to do so, under Article 30(1) of the Constitution is guaranteed and no administrative or statutory action of Central or State can encroach upon or curtail that right.

##. Now, a subsidiary question only remains to be considered in the Petition filed by Mary Brown Memorial Training College. One additional grievance raised is that the intake capacity of the Institution was reduced arbitrarily from 40 to 30. This matter may not detain us any longer. For the current academic year already we have permitted intake capacity of 40 to be filled by the Institution. On the aforesaid grievance we only direct respondents that in accordance with the reasonable regulatory measures laid down under the provisions of the State law and the Central law the intake capacity for future academic years of the Institution should be fixed after giving due opportunity of hearing to the Institution, on the availability of infrastructure, strength of teachers and other staff and other requirements laid down. The intake capacity of a minority educational institution is required to be fixed considering the educational

facilities it can provide. Such regulatory measures, in our opinion, do not impinge upon any fundamental right of the Minority Educational Institutions under Article 30(1) of the Constitution.

##. As a result of the detailed discussion aforesaid, the Petitions partly succeed with the following directions:-

(1) The respondents are within their powers and rights in directing the petitioner Minority Educational Institutions to fill 50% of their seats from general students strictly on merit and on the basis of the Centralised Admission List sent to them by the Council.

(2) In granting admission to 50% seats to be filled from general students on merit, the respondents representing the State of Gujarat and the Council shall not restrain the petitioner minority institutions from adopting norm of fixing percentage higher than 50% in qualifying examination and adopting mode of selection by interview but marks for the interview shall not exceed 15% of total marks, so as to make the process of admission more objective.

(3) The arrangement made by us above shall continue for the current academic session for which this Court has already passed an interim order on 05-07-2001 and thereafter which is made absolute. For subsequent academic sessions, the directions made by this Court above shall be followed in granting admission to 50% of seats to be filled from general students on merit. This arrangement and the mode of admission shall continue until otherwise directed by the Larger Bench of the Supreme Court and subject to its final verdict.

(4) We further direct that the petitioners intake capacity of 40 of the current academic session 2001-02 shall not be disturbed. For the subsequent academic sessions if respondents propose to change the intake capacity of Minority Institutions, the same shall be done only after grant of due opportunity to them of placing their point of view and decision be taken after hearing them on the said question and without prejudice to their right in law to agitate the question in appropriate forum.

(5) All impugned communications which are issued by the respondents to the extent they are contrary to our above directions are hereby quashed.

##. In the circumstances, we do not think it proper to make any order as to costs of these Petitions.

(D.M.DHARMADHIKARI, C.J.)

(RAVI R. TRIPATHI, J.)

[sndevu]